

No. 23-1078

In the United States Court of Appeals
for the Fourth Circuit

B.P.J., by her next friend and mother, Heather Jackson,

Plaintiffs-Appellants,

v.

WEST VIRGINIA STATE BOARD OF EDUCATION, HARRISON COUNTY BOARD OF
EDUCATION, WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION,
W. CLAYTON BURCH, in his official capacity as State Superintendent, DORA STUTLER,
in her official capacity as Harrison County Superintendent,

Defendants-Appellees,

- and -

THE STATE OF WEST VIRGINIA, LAINEY ARMISTEAD,

Intervenors-Appellees

On Appeal from The United States District Court
for the Southern District of West Virginia

**BRIEF OF TRANSGENDER WOMEN ATHLETES AS *AMICI CURIAE*
IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL**

David Brown
*Transgender Legal Defense &
Education Fund*
520 8th Ave. Ste. 2204
New York, NY
(646) 862-9396

Joseph M. Callaghan
Mayer Brown LLP
71 South Wacker Dr.
Chicago, IL 60606
(312) 782-0600

Counsel for the *Amici Curiae*

TABLE OF CONTENTS

STATEMENT OF INTEREST 1

ARGUMENT 2

 Jamie O’Neill, San Antonio, Texas 5

 G.M., Brooklyn, New York 9

 Jamie Neal, Las Vegas, Nevada 13

 Amelia Gapin, Jersey City, New Jersey 17

 Erica Meacham, Eugene, Oregon 21

 Kayla Ward, Los Angeles, California 24

 Hailey Davidson, Kissimmee, Florida 29

 Chloe Anderson, Irvine, California 33

CONCLUSION 37

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Grimm v. Gloucester Cnty. Sch. Bd.</i> , 972 F.3d 586 (4th Cir. 2020).....	2, 4
<i>Kadel v. N.C. State Health Plan for Tchrs. & State Emps.</i> , 12 F. 4th 422 (4th Cir. 2021).....	2
<i>Williams v. Kincaid</i> , 45 F.4th 759 (4th Cir. 2022).....	2
Other Authorities	
GLSEN, <i>The Experiences of LGBT Students in School Athletics (Research Brief)</i> , 2013.....	3
Kosciw, J.G., Clark, C.M., & Mendard, L. (2022), <i>The 2021 National School Climate Survey: The experiences of LGBTQ+ youth in our nation’s schools</i> , The Gay, Lesbian, & Straight Education Network, 2022.....	2, 3
The Trevor Project, <i>The Trevor Project Research Brief: The Well-Being of LGBTQ Youth Athletes</i> , Aug. 2020.....	3

STATEMENT OF INTEREST

Amici are transgender women athletes of varying ages who have had life-changing opportunities through participating in a range of different levels of sports around the country. West Virginia House Bill 3293 (eff. July 8, 2021) denies transgender women and girls, like *amici*, these opportunities by forbidding them from playing on teams consistent with their gender. As such, *amici* have a direct interest in this matter.

As demonstrated by *amici*'s stories, transgender athletes' ability to access the same opportunities that sports provide to their cisgender peers depends on their ability to participate in accordance with their gender identity. Transgender *amici* who participated in sports with policies that respected their gender identity excelled socially and personally, were able to develop critical skills that carried over to their personal lives and development, and built strong relationships with their teammates and competitors, which in turn furthered understanding, acceptance, teamwork, and inclusivity. In contrast, when *amici* were discriminated against or excluded from sports, they often suffered social, emotional, and physical harm.

ARGUMENT

HB 3293 denies transgender student-athletes the benefits of school sports and singles them out for discrimination. As repeatedly explained by this Court, “[j]ust like being cisgender, being transgender is natural and is not a choice.” *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 594 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *cert. denied*, 141 S. Ct. 2878 (2021); *accord Kadel v. N.C. State Health Plan for Tchrs. & State Emps.*, 12 F. 4th 422, 427 (4th Cir. 2021), *as amended* (Dec. 2, 2021), *cert. denied*, 142 S. Ct. 861 (2022)). Nevertheless, transgender people face discrimination and violence because of who they are. *Grimm*, 972 F.3d at 611-12 ; *Williams v. Kincaid*, 45 F.4th 759, 772 (4th Cir. 2022) (internal quotation marks omitted) (acknowledging the “long history of discrimination against transgender people.”). Unfortunately, this includes significant barriers to education. A 2021 study showed that nearly three-quarters of transgender girls were victims of discrimination at school, and did not feel safe there, leading many to avoid school restrooms, PE classes, or school altogether.¹ Conversely, students whose gender identity is affirmed have better outcomes. *Grimm*, 972 F.3d at 597. As

¹ Kosciw, J.G., *et al.* (2022), *The 2021 National School Climate Survey*, The Gay, Lesbian, & Straight Education Network (“GLSEN”), 2022, at 71, 73, <https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf>.

demonstrated by *amici*'s stories, access to gender-affirming athletic teams is important to help transgender youth overcome the challenges they face due to anti-transgender prejudice. *Amici* are not alone in finding such benefits: in one study, 27% of transgender student-athletes got mostly As, while only 19% of transgender students who did not play a sport attained the same grades.² LGBT student-athletes generally had higher self-esteem, better GPAs, and a greater sense of belonging than LGBT non-student-athletes.³ In schools with comprehensive policies on rights and protections for transgender students, including sports, transgender students were less likely to miss school or hear negative remarks, and more likely to feel a part of their school community and get help when harassed.⁴

HB 3293 also ignores realities regarding the athletic performance of transgender women and girls, and the policies of virtually every athletic regulatory body, including the National Collegiate Athletic

² The Trevor Project, *The Trevor Project Research Brief: The Well-Being of LGBTQ Youth Athletes*, Aug. 2020,

<https://www.thetrevorproject.org/wp-content/uploads/2020/08/LGBTQ-Youth-Sports-and-Well-Being-Research-Brief.pdf>.

³ GLSEN, *The Experiences of LGBT Students in School Athletics (Research Brief)*, 2013, <https://www.glsen.org/sites/default/files/2020-06/The%20Experiences%20of%20LGBT%20Students%20in%20Athletics.pdf>.

⁴ Kosciw, et al., *see supra* n.2, at 71, 73.

Association (NCAA) and the International Olympic Committee (IOC). *Amici* do not dominate their sports because they are transgender. Instead, *amici* have to work hard, practice, and persevere through the same challenges as every other athlete. Indeed, even in circumstances where other athletes initially questioned their participation, their concerns faded after playing together.

Because HB 3293 denies transgender women access to equal opportunities and is based on unfounded stereotypes about transgender women, it fails to survive intermediate scrutiny under the Equal Protection Clause. *See Grimm*, 972 F.3d at 608, 623 (Wynn, J., concurring) (the State must establish an “exceedingly persuasive justification” for a policy classifying transgender students differently from their cisgender peers); *see also id.* at 620 (“How shallow a promise of equal protection that would not protect [a student] from the fantastical fears and unfounded prejudices of his adult community.”). It also fails to survive review under Title IX, because it treats transgender student-athletes worse than those with whom they are similarly situated, by depriving them alone of the benefits of playing sports with other students of their same gender. *See id.* at 618-19. *Amici* respectfully urge this Court to consider their stories in reversing the decision of the Southern District of West Virginia.

Jamie O'Neill, San Antonio, Texas⁵



Jamie O'Neill is a softball and professional golf long drive competitor in San Antonio, Texas. Jamie has always been passionate about sports, playing everything from field hockey to cricket as a child. As someone who did not come out until adulthood, Jamie struggled for years with her need to transition. She felt like she was “dying inside and no one knew.” So, in 2010, Jamie made the decision to begin her transition because, though she feared it might cause the loss of family,

⁵ These narratives are based on emails and interviews conducted November 2022 to March 2023.

friends, and her career, Jamie “knew that I was not going to lose [my] life.”

Jamie stopped playing sports to focus on her transition in 2010, but came back to softball in 2013 to “find a new community.” She joined the North American Gay Amateur Athletic Alliance Slow Pitch Softball league and, later, the Amateur Sports Alliance of North America. When Jamie joined her first women’s softball team, “a lot of people had a lot of questions” about her transition, which Jamie happily answered. Once people got to know Jamie, she felt she had “found my community” where “everyone accepted me.” Playing softball made Jamie feel welcome in athletics and gave her numerous opportunities to compete in different leagues, tournaments, and the Gay Softball World Series.

Jamie loves her softball family, but rediscovering golf in 2019 gave her “a new passion.” Her career in long drive, which Jamie describes as trying to “hit the ball as far as you can,” began in 2019 after a co-worker joked that she should “go pro” after a corporate golf event. It did not take long for Jamie to take that suggestion seriously. After going through the Golf Channel’s approval process, Jamie began serious training for the Golf Channel’s World Long Drive (“WLD”) tour in early spring of 2020. Though that tour was cancelled, Jamie remained undeterred and joined the Ultimate Long Drive Xtreme Long Drive Tour in 2020, as well as the

Professional Long Drivers Association in 2022. Jamie says, “[f]inding the community within long drive has been life-changing” and “everyone has encouraged me to meet my highest potential.”

It is difficult for Jamie “to believe that in 2022, transgender athletes still face discrimination, harassment, bullying, violence and bans” when organizations including the IOC and the NCAA have “had inclusive policies, guidelines, and frameworks in place for the past 20 years.” She believes that the “call for trans exclusion in sports comes from the perception that trans women have a ‘competitive advantage,’” which comes out of “an incorrect narrative.”

Before she transitioned, Jamie could bench press up to 220 pounds. Now, she doubts she could bench press 80 pounds because her physical transition caused major changes to her strength and muscle mass. The reason that Jamie is still competitive in her sport is simple: hard work. Despite being “15 years older with a bad back” and having less upper body strength than pre-transition, Jamie says that, due to years of practice, “I’ve beaten people who’ve beaten me. We put in a lot of work to be competitive at this level.” She says that people who do not know anything about her “go down a dark rabbit hole” of assumptions based on false stereotypes: “Do I have world records in distance? Club speed? Ball speed? No. Many people are better than me.” Halfway through the 2022

season, Jamie's best finish in a tour event was a tie for third place. She is still hoping for her first win.

Sports helped Jamie deal with stress and anxiety, improved her confidence, and gave her the opportunity to be a leader, helping others in her community learn and grow. It is important for Jamie to continue competing as a transgender woman because she "want[s] to be a role model for future generations of LGBTQI+ kids who love playing sports, so that they will be able to compete at any level without harassment, intimidation, scrutiny or overreaching guidelines." Although Jamie received initial pushback from the long drive associations she participates in and some people in the sport "out of ignorance," she overcame those hurdles and says: "Now, my coaches, my friends don't care. They just see me. They just see Jamie."

G.M., Brooklyn, New York

G.M. is a rugby player in Brooklyn, New York. G.M. has played a variety of sports for most of her life, ranging from ice hockey to soccer, basketball, baseball, ultimate Frisbee, and, most recently, rugby. She moved to the San Francisco area approximately six years ago, and, shortly thereafter, came out as transgender. G.M. started playing rugby only four years ago, but has fallen in love with the sport and since played on three teams: the San Francisco Golden Gate Women's Rugby Club, the Berkeley All Blues, and now the New York Rugby Club.

Because the governing body for her rugby league follows the IOC guidance with respect to transgender women athletes, G.M., who started hormone replacement therapy (HRT) over a year before joining, received nothing but a warm welcome. Her team embraced her and welcomed her to the sport, to what would become a new family, and to a place that became a safe space for G.M.

Since G.M. had come out relatively recently, she worried about her participation in women's rugby, but those worries were soon put to rest. G.M. remarks that what she "love[s] about rugby is that all shapes and sizes of people can play" and the sport, despite its outward appearance, is "designed to be safe" for all players. At 5'7" and approximately 140

pounds, G.M. routinely goes up against other women from 5'3", 100-pound players who are quick and agile to 6'0", 250-pound women who are nearly double her size. G.M. explains that she is "one of the faster players, but not the fastest, and is definitely not the strongest, and is thrown around plenty" by competitors.

This is especially true as G.M. has played in increasingly competitive levels. This past summer, her team reached the Division Two National Championship, where most players were larger than she is. And during a scrimmage a few weeks later, she had her arm broken in a collision with a cisgender player. While the injury was unfortunate, G.M. can't help but chuckle, because her experience is the opposite of narratives playing on unfounded fears that cisgender women face a higher risk of injury from transgender women on the field.

In fact, G.M. loves rugby all the more for its intensity. The camaraderie and welcome she received was actually a "significant outlet for [her] and helped [her] to process difficult things in [her] life and deal with stress." Rugby helped G.M. process her gender dysphoria and provided positive mental and psychological benefits during her transition. It also helped her develop leadership and teamwork skills, becoming a recruiter for the sport and a leading voice for the league and its inclusive policies. In 2020, flouting the IOC and most governing bodies

in international sports, World Rugby adopted a policy essentially banning transgender women who transitioned after puberty, relying on similarly flawed reasoning as West Virginia's HB 3293. USA Rugby has not followed suit, and its national professional team has campaigned against World Rugby's discriminatory policies, its players recently wearing "keep rugby inclusive" warm-up shirts at last year's World Cup.

Asked about laws like HB 3293 and the World Rugby policy, G.M. remarked that she and her teammates are fighting for inclusion, and explains that the policy is "trying to solve a problem that does not exist." "There is currently no out transgender person topping the elite level of athletics," she says, dispelling the notion that transgender women athletes will exclude cisgender women from competition. She uses as examples the inclusive policies of USA Rugby at the professional level, the fact that her team was eliminated from the national championships at the semi-final, and even her own broken arm, to show that concerns about allowing transgender athletes to play are unfounded at best, and propaganda at worst. G.M. says the flawed justifications for such policies are merely "a thinly veiled attempt to roll back the ability of transgender people to participate." She says that this affects not just rugby, but the entire community, sending a message that "transgender women are not welcome" to share spaces with other women. In addition to risking a

rollback of the personal, mental, and psychological benefits people like G.M. have found in the sport, these attitudes and policies could change the way people are treated from respect and inclusion to derision and exclusion. G.M. wants to share that rugby is not just a beautiful sport; it's a shared language that allows someone like her to move across the country and have fifteen new best friends after the first week of practice. Laws like HB 3293 deny transgender girls these opportunities.

Jamie Neal, Las Vegas, Nevada



Jamie is a softball player in Las Vegas, Nevada. Jamie grew up south of San Jose, California, in a “trailer park in a rough neighborhood.” She explains that playing sports was a way to fit in, improve herself, and avoid getting into trouble. Because Jamie’s family could not afford competitive private leagues, her only outlet was intramural and high school sports, including volleyball — which she described as her “first love” — and which she expects to return to playing in future seasons, as

she expects to retire from softball in the near future. After high school, Jamie continued playing volleyball and started playing club softball, and sports remained a significant source of positivity in her life.

In approximately 2015, Jamie came out as transgender and soon started HRT. At first, Jamie thought she would not be able to participate in competitive sports again, which was deeply upsetting. Jamie reports that every meaningful relationship she has had in her entire life outside of family has been directly impacted by playing sports together or watching sports. The camaraderie is unlike anything she's ever experienced. She says that there is nothing like people cheering and being impressed by the feats you're able to accomplish athletically. Nevertheless, her transition and living as her authentic self were necessary for her personal well-being and mental health. Fortunately, she soon learned about tournament-level softball governed by organizations such as United States Specialty Sports Association ("USSSA"). Fortunately, the league has an inclusive policy for transgender players and Jamie joined a tournament team after being asked to join by a friend. She says playing sports with women in her authentic gender has been the greatest athletic feat of her life. She has gained incomparable confidence and freedom by being able to play as her true self, without barriers; her playing ability increased; the depression

and self-hatred she had suffered through years of isolation and hiding her identity decreased; and her friendships and relationships flourished.

Jamie was ecstatic to be competing again, but, initially, not all the competitors were welcoming. She recalls that at the beginning, she heard the stereotypical comments from other women that “I couldn’t cut it as a man in sports” or that “I shouldn’t be allowed to play as a woman.” However, that changed as Jamie advocated for herself and people got to know her. Jamie saw real change and last season was “the most welcome I’ve felt in tournament softball.” “People are realizing who I am, and learning the science” regarding transgender athletes, and many of the people who were initially resistant to Jamie’s inclusion have “reached out to say they were closed-minded and did not realize that [Jamie’s participation] had nothing to do with an advantage” for her.

In fact, Jamie explains how her transition and HRT affected her, recalling that she used to be able to routinely hit the ball over 400 feet, which became 300 feet after HRT (among other changes to Jamie’s strength and endurance). At the same time, Jamie explains that her strength as a hitter does not come from being transgender, but because she spends countless hours practicing in batting cages and has a batting average of .750 to .800 due to that practice and hand-eye coordination. When asked about her role on her team, Jamie laughs and says “I would

say I'm a defensive liability but an offensive positive" because she has a high batting average but is "not as fast and does not have as good of an arm as many on the team." Jamie's experience demonstrates that the mere presence of a transgender athlete does not offer an advantage to her team. She points out that at the last USSSA World Series in September 2020, her team lost both games. But her team had fun, they competed, and Jamie was surrounded by the camaraderie and friendship of her team and competitors. Jamie will continue to play on her team this year "which will make it 10 years of playing softball, nine of which will be as my authentic gender."

Jamie is glad that her sport has an inclusive policy for transgender athletes, in part because league rules would not allow her to play on a men's team, and thus an exclusionary policy would steal the sport from her completely. She knows that laws like HB 3293 will prevent transgender kids from receiving the benefits of sports that have been so important for her. Instead, they cruelly force children to experience the kinds of suffering and isolation on transgender children that she endured for so many years until she came out. They also unfairly deprive cisgender children of the championship and friendship of their transgender peers.

Amelia Gapin, Jersey City, New Jersey



Amelia is a runner in New Jersey. She explains that she never ran as a child, and in fact disliked being forced to run the mile in PE class twice a year. However, after college, Amelia began running as a way to relieve stress, process emotions, and better herself. To her surprise, she found great peace in running, came to love it, and started participating in endurance races such as marathons.

In 2013, Amelia came out as transgender and started HRT. Given transgender-inclusive policies in much of the world of competitive running, Amelia was able to participate as the woman she is. Fortunately, she has received a warm reception in the sport and, for the most part, the fact that she happens to be transgender has not been an issue.

For example, after six years of attempts, Amelia qualified for the Boston Marathon in 2018. When asked how she did, she laughs and says she placed “12,000th, 13,000th, 18,000th ... so far back” and that the “only part that mattered was getting myself to the starting line.” She explains that she is not placing routinely and questions that if transgender women “had such an advantage, why are we not out there crushing it?” Amelia adds that, given her HRT, her “testosterone level is lower than a lot of the cisgender competitors” and that she faces the same challenges as all the other women runners.

When asked about HB 3293 and what would happen if the same rule applied in her sport, Amelia bluntly explains that “it would mean that they are taking my right to exist as a human in the world away.” She would not be able to participate, both because it would demean her as a person and force her to lie publicly about herself—only because she is transgender—and because she would not be able to prove her identity

to enter a men's category, since all of her identity documents show her as the woman she is, and because anti-transgender rules are also at odds with developments in her sport, which is becoming more, not less, inclusive of transgender athletes. Not only does marathon running permit transgender athletes to participate in accordance with their gender identity, under their true gender, but the Boston and London marathons now formally recognize non-binary runners, no longer forcing them to choose a binary gender in order to race. These rules allow transgender and cisgender athletes alike to benefit from one another's training and progress, to share knowledge about injury-prevention and training techniques, as well as new products, and to form fulfilling relationships within the sport. They also send the message that transgender and non-binary runners aren't second-class citizens.

Amelia also explains the inherent danger in asking transgender athletes to run as the wrong gender, forcing them to effectively out themselves. Using her own experience, Amelia recalls that an anti-transgender blog published a story about her running in the Boston Marathon, claiming Amelia would be advantaged over cisgender women. Because of the public availability of real-time tracking of athletes along the racecourse, she was forced to worry during her run that someone who might want to do her harm would know exactly where she was. Amelia's

story highlights just how dangerous exclusionary policies can be for transgender athletes, and she explains that, for her, “running is my escape; I see it as my safe place and an important thing for my mental health,” and changing the rules would take all of that away from her for reasons that are not borne out by reality.

Erica Meacham, Eugene, Oregon



Erica was a football player for the Oregon Hawks, an independent team that was formerly in the Women's Tackle Football League (WTFL). During her time with the Hawks, she was a part of team leadership and encouraged another league's officials to "change their policy," efforts through which the "door was opened," as "before, they wouldn't let trans women play. Period." As a professional player and advocate, she came a long way from growing up in a religious tradition that prohibited playing sports. She recalls that she "always wanted the camaraderie so desperately when I was a kid" and the sense of belonging sports would

provide. It was only in her 20s that she started playing football. For the next decade, she played and coached for men's teams in a number of competitive leagues. However, something was still missing, and "after years and years of processing indoctrinated feelings about gender," she came out as transgender and transitioned in 2014.

Erica recalls feeling upset because "I thought I was done with sports after transitioning because of the stigma" placed upon transgender athletes, but knew that living as a woman was critical to her well-being and so "made peace" with it. However, after starting HRT and proceeding through her transition, she realized just how extensive the changes to her body were. As Erica put it: "It gave me hope to play again." After playing on several slow pitch softball teams, including a women's team, Erica realized she needed sports: they were central to her human experience. "When my father disowned me," she recalls, "my teams became my family, and for me sports is about family." Sports gave her strength and the confidence to be herself.

Several years after she transitioned, Erica returned to football. Because she had read negative stories claiming, like the proponents of HB 3293 do, that transgender athletes have unfair advantages in sports, Erica's "biggest fear was that I would be dominating or unfair, and I didn't want to take away from a cisgender player." But she immediately

realized that “it was not going to happen,” she was just “another one of the 11 girls” on the field trying for the same goal. Erica explains that “it was not as if I just showed up and then started throwing rocket passes down the field.” Instead, she was “so impressed by the other women and how much better than me they are.” The notion that transgender women are uniquely advantaged over cisgender women is “a false narrative” that is “really frustrating.” Erica recalls getting her “butt kicked” but had “the time of [her] life.” She thinks it was “a really good experience, and good proof that trans women are women.”

Erica was welcomed into the team and the WTFL, largely because of its transgender-inclusive policy. Football gave her a new family and self-confidence, and “made me capable in my transition, coming out, and speaking out” about her experience. She “cannot imagine what my life would be like without my team,” and hopes that laws and policies like HB 3293 do not proliferate. At risk is “the sisterhood, the friendships,” “feeling wanted, feeling appreciated.” For Erica, exclusionary policies are about a fundamental misunderstanding of who transgender people are: “I think people are afraid of what they don’t understand, and they seem not to care to understand us.” For many transgender athletes, Erica asserts, banning them from sports would “take away hope, would take away everything” for no reason.

Kayla Ward, Los Angeles, California



Kayla Ward is a model, realtor, and athlete who, until recently, aimed to be the first openly trans woman in the WNBA. She has played basketball since “3 or 4 years old,” mostly in recreational and church leagues. She now plays in a LGBTQ+ “women’s plus” league that welcomes non-binary people as well as cisgender and transgender women.

As a child, Kayla was shy and withdrawn because she “felt so different, in a time when we did not have social media or any kind of representation out there that told me I wasn’t alone.” As a result, “I

retreated into myself, didn't really have a lot of friends growing up." But, she found sports, especially basketball, "allowed me to connect to other people." "It was how I was able to let go of the stress, enjoy being a kid, and learn valuable life lessons like teamwork and social skills." To Kayla, "basketball was everything." For example, she wasn't sure whether she would attend college, but on a college visit she played basketball with some students, which gave her a "sense of connection and friendship." She went to school there and kept playing.

Upon graduation, though, Kayla "stopped playing basketball for a long time." She got married, became a minister, and focused on work. She "tried really hard to suppress how I felt" and "tried to pray it away." Hiding her gender identity took a toll. When her spouse "asked for a divorce, it was a really tough time." Kayla "decided that my life was over." She contemplated suicide, as she had often since she childhood, and planned to take her life one night. She was 29. It was that night, alone but for her two cats, that Kayla decided on a different path forward. She decided that "if I am going to lose everyone else, which I was going to do by ending my life, I might as well be willing to lose everyone and gain myself." Kayla decided to begin her transition.

Kayla's transition allowed her "to just be free for the first time." She could finally say that "I openly share who I am because I'm proud of it."

Kayla left the area where she grew up and relocated to L.A. By then, she had been away from basketball for nearly a decade.

Feeling increasingly comfortable, Kayla started watching basketball again and realized how much she missed it. She decided she would take on a new challenge: “try out for the WNBA,” and “be the first trans woman to play.” So, Kayla had to get down to work. She headed to a park to play. “It was all men.” Some players teased an opponent, “you got blocked by a girl!” “It was fun until the end, when a couple of the guys asked if I had Instagram.” Kayla shared her handle, but “left immediately” because she “didn’t want any problems” once her fellow players learned she is trans. At that point, given the prevalence of violence against trans women, Kayla was “afraid to go back.” So, again, she “stopped, and didn’t play again for a couple of years.”

With the passage of another five basketball-less years, Kayla retreated “back in my own cocoon again a little bit.” But thankfully, last spring, Kayla found a league made up of ciswomen, transwomen, and non-binary players. Her first year brought back wonderful feelings. “Everyone is absolutely amazing. Nobody has any issues with me being trans.” “They just like to play” and “it’s definitely a safer space than going back to the park.”

If Kayla couldn't play in the league, "it would be devastating." While she could go shoot around on her own, "it's not the same because as humans we desire to connect with other people who share our interests. To take that away from people like these laws are trying to do from youth, who already feel isolated and alone--It's wrong."

Asked whether she dominates, Kayla pointed to the math: "We keep stats. I didn't even average double-figures in points." "There were plenty of other people who were averaging 15, 18, or 20 points per game." "So, the idea that I'm . . . dominating everybody is kind of crazy." She points out that many factors other than hormones affect performance. Given her age, she realized she "just wasn't going to be able to play professional sports."

Kayla is very public about her story, and received press coverage of her path toward the WNBA. Although "the majority are supportive," she has received "a lot of hate, a lot of backlash from it, because of the rhetoric going around the country right now." Kayla believes society is "repeating history by telling the most marginalized group that they don't belong." The worst part is its effect on kids. "Adults can fight for themselves a little bit better, but we're telling [trans] kids that they don't fit in, when they already don't feel like they fit in. We're telling them that they don't matter. And that's hateful. It's ugly."

Kayla concludes: “At the end of the day, it’s a game.” “It was made for kids. And we should all have the ability to enjoy that with our peers, and not be forced on who we should or shouldn’t play with, where we do and don’t belong.”

Hailey Davidson, Kissimmee, Florida



Hailey Davidson is a professional golfer living in Kissimmee, Florida. She started playing golf with her dad when she was ten or eleven and it quickly became her world. She loved that it was an individual sport with “no pressure of needing to fit in with teammates” or dealing with “outside influence,” which was particularly helpful to Hailey before she came out. Hailey says that golf is “what kept me alive” and “I don’t know if I’d still be here without it.”

Hailey started playing professional golf two years ago and plays in any event she can get into, including the East Coast Women’s Pro Golf Tour. Though Hailey’s story is one of perseverance and success, her

journey to professional golf was not easy. When Hailey started to understand her gender as a teenager, the word “trans” basically did not exist in the media. So, Hailey knew she was different but did not understand why. Because of the lack of transgender representation in sports at the time, when Hailey realized she needed to transition during her late teens and early 20s, she thought that was the end of her athletic career. Hailey says that “[g]olf had been my whole life, the only thing I ever wanted to do. I thought transitioning meant I had to give up the game fully, but I knew my life needed saving.” So, she stopped playing college golf to begin her transition.

Hailey was unable to resume the sport for six years because that is how long it took to meet the Ladies Professional Golf Association’s (LPGA) requirements for transgender female athletes, which at the time required years of HRT and gender reassignment surgery, as well as a one-to-two-year period post-surgery before competing. Hailey was unable to compete for years because she was unable to afford gender reassignment surgery. She was only able to pay for that surgery because she “got lucky” with work insurance that covered the cost of her surgery. Hailey hopes that the LPGA will change its surgery requirement and says: “It feels like the surgery is just an extra financial requirement.”

Before transitioning, Hailey's swing was 115 miles per hour; now, it is 100, which caused an "insane difference" in the distance that she can hit the ball, reducing it by 40 to 50 yards, a larger change than the average difference between LPGA and PGA tour golfers. This change moved Hailey down from a swing that was in "the upper half" of male golfers to "the middle side" of female golfers. Other changes, like spin rate and the way Hailey hits the ball now, impact her entire game. She says she is "getting outdriven often" and that "[b]eing bigger isn't creating an advantage" because now she "has less testosterone than a cis female player" and had to work hard to gain the muscle needed to compete. Hailey says "you can see it click in people's minds as I get outdriven that I am literally just like the other girls."

Once Hailey could compete again, she says "I felt like I was being given my life back when I was really given nothing, just the ability to play like everyone else." When she lost personal relationships due to anti-transgender attitudes, "the thought that one day I'd play golf again kept me going. If I'd known for sure that I could never play again, I don't know how my transition would have gone or if I'd even be here right now without that glimmer of hope pushing me forward." She cannot imagine "how bad getting sports ripped away must be for a kid." She says: "If

you're 10 and told you can't [pursue your sport], finding a new dream is not that simple."

When Hailey won her first women's tournament, it did not feel hugely significant to her at the time; but she soon started receiving messages from trans kids letting her know that she "gave people hope." Although Hailey has received many negative messages, including death threats, regarding her participation in women's golf, it is the positivity that shines through for her. Hailey says, "I am not changing the world, but if I change one opinion here, and give a kid hope there, my visibility is making a difference . . . Me existing and playing has already had a greater impact that I ever would have thought. If it saved my life, I know it's doing that for someone else . . . if I can be a beacon of hope, that makes it more than worth it."

Chloe Anderson, Irvine, California



Chloe Anderson previously played NCAA volleyball and participated on a women's crew (rowing) team at college at University of California, Irvine. Sports have always been important in Chloe's life, and she naturally gravitated to volleyball. Unfortunately, while the NCAA policy itself allowed for Chloe's participation on a women's team, the lack of a supportive environment caused serious and lasting harms to Chloe — harms that she has only recently been able to overcome, including through her participation in other sports.

Before starting college at the University of Southern California, Chloe came out as transgender and started HRT in 2012. She soon

noticed changes, remarking that her routine long-distance bicycle rides changed after her transition: “I used to go on 70-mile rides with my dad, but in the first three months after starting HRT, I could no longer keep up, . . . and the rides ended after 30 miles.” That was not the only change Chloe noticed. Chloe recalls that she had to retrain her entire body because her brain recalled how she timed hits and plays before HRT, but her body simply responded differently now. In other words, Chloe’s muscle memory no longer applied and “I had to relearn everything.”

Nonetheless, sports were incredibly important to Chloe, and helpful in making her feel “like everything was going right, that I had goals, and was focused, and could be happy.” She was bullied and beaten a lot as a child, and sports was one of the few outlets in which she found joy. After starting college in 2014, Chloe joined the women’s volleyball team. Even at six feet tall, she was not the tallest or strongest on the team, and remarks that many of her cisgender teammates’ abilities on the volleyball court exceeded hers. Unfortunately, the program was not supportive, and Chloe often heard slurs from competitors and became aware that coaching staff were disparaging her behind her back. While she initially put on a brave face, she nonetheless felt isolated and attacked. Eventually, things became so bad that Chloe pulled out of the program.

The isolation was devastating, resulting in significant depressive episodes and a suicide attempt. She ultimately left USC.

Fortunately, with the help of friends and family, Chloe was able to turn the corner and focus on herself and her mental health. She decided to use her challenges to try to help others like her, speaking out and telling her story “because I don’t want future athletes to have to go through what I did.” Sports is still an important part of Chloe’s mental health and personal development, even if what she endured “destroyed my love of volleyball and is still hard to think about.” She transferred to a new university and, because she needed the focus and goals sports provide her, joined a women’s crew (rowing) team. Chloe received nothing but positivity and inclusion from her crew team, and that strength contributed to her ability to share her story and advocate for transgender athletes and against laws like HB 3293 that, as Chloe states, “are taking away so much from transgender athletes without any reason other than fear and with no basis in science or reality, almost as though [proponents of the law] had never spoken with a transgender person.” Chloe’s experience shows that the participation of transgender athletes strengthens women’s sports and doesn’t lead to unfair competition. She believes that laws like HB 3293 are simply stereotype-based fearmongering aimed at a small and vulnerable population, and have

nothing to do with athletics. She offers to meet and talk with anyone who feels threatened by transgender athletes, to “show them my sport stats and why their fears are entirely misplaced.”

CONCLUSION

For the foregoing reasons, *amici* respectfully urge this Court to reverse the decision below.

Dated: April 3, 2023

Respectfully submitted,

/s/ Joseph M. Callaghan

David Brown
*Transgender Legal Defense &
Education Fund*
520 8th Ave. Ste. 2204
New York, NY
(646) 862-9396

Joseph M. Callaghan
Mayer Brown LLP
71 South Wacker Dr.
Chicago, IL 60606
(312) 782-0600

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Local Rule 29 because it contains 6,499 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements and type-style requirements of Fed. R. App. 32(a) because it has been prepared in a proportionally spaced typeface using Microsoft Office 365 in a 14-point Century Schoolbook font.

Dated: April 3, 2023

/s/ Joseph M. Callaghan

CERTIFICATE PURSUANT TO FED. R. APP. PROC. 29(a)(4)(E)

No counsel for a party has authored this brief, in whole or in part, and no person, other than *amici* or their counsel, has made a monetary contribution to the preparation or submission of this brief.

Dated: April 3, 2023

/s/ Joseph M. Callaghan

CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25(d) and Local Rule 25, undersigned counsel certifies that the foregoing document was this day served via notice of electronic filing with the Fourth Circuit CM/ECF system on all counsel of record in the case.

Dated: April 3, 2023

/s/ Joseph M. Callaghan